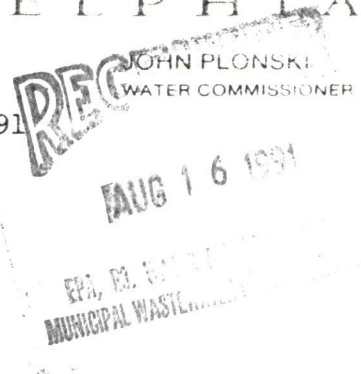




CITY OF PHILADELPHIA

WATER DEPARTMENT
ARA Tower at Reading Center
Philadelphia, Pa. 19107-2994
(215) 592-6103

August 14, 1991



Nicholas F. Catania
Executive Director
Delaware County Regional Water
Quality Control Authority
P.O. Box 999
100 East Fifth Street
Chester, PA 19016

Re: CITY OF PHILADELPHIA'S SERVICE
TERMINATION NOTICE TO DELCORA;
CAPITAL AND RATES ISSUES

Dear Mr. Catania:

This letter is in response to your correspondence regarding our termination of wastewater treatment services to Delcora.

I feel the need to respond to your letter for two reasons. First, to set the record straight. Second, to offer Delcora one final opportunity to resolve the existing disputes. For convenience sake, I will respond to the statements in your letter in the order they appear.

You have stated that our notice of termination was a nullity and issued only to portray Delcora in a "bad light". Nothing could be further from the truth.

As I stated in my previous letter, the contract provides for formal notice of termination five years before it expires. However, the design, regulatory approval process, financing, construction, etc. of a wastewater treatment plant could take up to eight or ten years. Thus as a matter of courtesy to Delcora, and to protect the environment, we provided Delcora with this advance notice.

We will, of course, send the formal five year termination notice as called for in the Agreement when that becomes appropriate.

Our purpose in transmitting this notice was to make it crystal clear to all critically affected parties of the consequences of your actions. A wastewater treatment plant will cost hundreds of millions of dollars.

Without federal grant money available, this will have an extremely serious financial impact on Delcora's Eastern Service Region. In addition, the environmental impact of Delcora's new plant must be carefully evaluated by Delcora's constituents.

The City has stood ready, willing and able to bring this matter to a swift and just conclusion. The City tried to reason, negotiate and cooperate for over two years with Delcora before we requested arbitration of the dispute. It was only after two years of Delcora's delay that we demanded the arbitration that even now Delcora resists.

Delcora continues to refuse to acknowledge the simple truth of this matter: now that the federal grant program has been abolished, and the little federal money which remains will not be received for years, the City must now change the method in which federal grant reimbursements are deducted from Delcora's capital contributions.

The actual facts of this matter are as follows:

1. As you correctly state, for the first 14 years of our contract the City paid all the capital costs for the Southwest plant. It then waited for grant funding reimbursement pursuant to the federal grants program for the construction of treatment works. This grant funding reimbursed approximately 75% of the total project costs.
2. Even though the City had to wait for this anticipated 75% reimbursement, we nevertheless deducted this amount from Delcora's capital contributions bill before it was actually received. We could have had Delcora pay its full share of capital costs and await reimbursement as the City waited, but we did not. By assuming all costs and only billing Delcora for its share of capital costs less the anticipated reimbursement, we were, in effect, providing Delcora with an interest free loan.
3. This situation continued up until 1988 when two major changes occurred. First, the federal construction grants program was terminated. The amount of unencumbered funds remaining in the program is now extremely small, perhaps as low as ten million dollars. The City, as well as all other jurisdictions in this state with federally funded treated plants, are competing for this money. The City spent and currently has eligible over sixty million dollars in capital expenditures for which it is seeking reimbursement from the remaining unencumbered funds.

4. The second major change in 1988 was that seven of the eight separate federal grants for the Southwest plant reached substantial completion (90 percent completion). Thus, as you know, the City will receive no further reimbursements from these specific grants until the EPA performs its final audits and reconciliation. This will take many years.
5. Thus, it is beyond dispute, that the City no longer will receive a 75% reimbursement for its capital expenditures for its Southwest plant. Very little, if anything, of its sixty million dollars in eligible capital costs from the unencumbered funds will be reimbursed. The little remaining money in its grants won't be received for many years.
6. Unresponsive to these facts, Delcora reacted by immediately terminating all capital payments to the City - even those which were undisputed. It took the City over two years of negotiation to get Delcora to pay even its acknowledged and undisputed share.
7. Delcora, has continued to insist that we deduct a 75% federal contribution from its bill, despite its acknowledgment that there is no reasonable expectation of ever receiving this money.
8. Finally, Delcora has delayed and sought to impede the resolution of this dispute through an impartial arbitrator.

I would further like to address your comments regarding the rates issue:

1. The City notified Delcora of the Rates increase on June 26, 1990 - not on October 1, 1990.
2. Delcora requested additional information in mid August - it was promptly sent to Delcora on September 6, 1990.
3. Delcora failed to respond until February 21, 1991, three weeks after the first bill under the new rates was mailed. Then for the first time we were advised that Delcora refused to pay its bill.
4. April 5, 1991 you requested additional information. April 26, 1991 we responded.

Given Delcora's refusal to pay, and, more significantly its refusal to resolve the dispute in a timely manner, we filed suit. We simply could not allow the rates issue to be delayed for years as the capital dispute was delayed.

Notwithstanding Delcora's history in this matter, we are still-willing to sit down with you and answer any questions you may have regarding the rates.

The City of Philadelphia continues to believe that regional cooperation is the only way for local governments and agencies to resolve their disputes. Thus I would ask that Delcora and the City resume intense negotiations to see if there is any remaining hope of amicably settling our differences. If agreement cannot be reached by September 13, 1991 on the capital issue, let's then seek out someone from the EPA or DER who is familiar with capital funding for treatment plants. William Bulman, Chief, Municipal Wastewater Construction Branch, Water Management Division, U.S. EPA Region III, is willing to act as the arbitrator in resolving the capital dispute. Mr. Bulman is extremely well versed in grant funding for treatment works. His fairness, honesty and integrity are beyond reproach. Similarly, for the rates dispute, we can choose an impartial arbitrator to bring swift finality to these issues.

The City hereby agrees to be bound by the decision of these individuals. To show the City's good faith, if Delcora agrees, the City will then rescind its notice of termination.

Please let me know your response as soon as possible.

Very truly yours,



RONALD L. COY
Deputy Water Commissioner

RLC:bs

cc: William Bulman
U.S. EPA Region III

Charles Fogg
Philadelphia Coordinator
U.S. EPA Region III

Ronald Furlan
PADER - SE Regional Office

Stuart Gansell
PA DER

Gerald M. Hansler,
Executive Director, D.R.B.C.

Honorable Mary A. Natale
Mayor, Clifton Heights Boro

Honorable Edward P. Guy
Mayor, Boro of Ridley Park

Honorable Steven J. Beckson
Mayor, Folcroft Boro

Honorable Donald McKinney
Mayor, Rutledge Boro

Anne Howanski
Township Manager, Ridley Township

Jane Billings
Manager, Swarthmore Boro

Honorable Edward G. Roth
Mayor, Glenolden Boro

Honorable Frank C. Kelly
Mayor, Collingdale Boro

Honorable Donald A. Cook
Mayor, Prospect Park Boro

Honorable Thomas Kilian
Mayor, Colwyn Boro

Honorable Charles F. Sanders
Mayor, Darby Boro

Honorable Carmen A. Cavacini
Mayor, Sharon Hill Boro

June A. Rodgers
Chief Executive Officer, Norwood Boro

cc: Edward Shew
Chairman of the Board
R-H-M Sewer Authority

Michael LeFevre
Manager, Springfield Township

Honorable James J. Ward,
Mayor, Upper Darby Township

Honorable Jack Edmundson
Mayor of Aldan Boro

Honorable John J. Rankin, Jr.
Mayor, Lansdowne Boro

Gary Cummings
Township Manager, Nether Providence Township

Lawrence Patterson
President of the Board, Darby Township

John R. Longacre, II
President of the Board of Commissioners
Darby Township

Honorable James Mollan
Mayor, Yeadon Boro

Richard E. Hunt
Chairman of the Board
Central Delaware County Authority

Honorable Gerald Connolly
Mayor, Morton Boro

Francis C. McCourt
Controller
DELCORA

Joseph L. Salvucci
Chairman of the Board
DELCORA

Bernard E. Stein
Vice Chairman of the Board
DELCORA

Edwin G. Bothwell
Treasurer
DELCORA

cc: David G. Gorbey
Secretary
DELCORA

Joseph G. Getz
Assistant Secretary Treasurer
DELCORA

Rocco Gaspari
Board Member
DELCORA

Joseph F. Kelly
Board Member
DELCORA

Rene F. Kress
Board Member
DELCORA

James J. Lavin
Board Member
DELCORA